

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

UNITED STATES OF AMERICA	§	
Vs.	§	CRIMINAL ACTION 6:08CR33
MARIO GARCIA-DURAN	§	

FINDINGS OF FACT AND RECOMMENDATION ON FELONY GUILTY  
PLEA BEFORE UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636(b), this matter has been referred by the District Judge for administration of the guilty plea and allocution under Rule 11 of the Federal Rules of Criminal Procedure.

On the 8<sup>th</sup> day of September, 2008, this cause came before the undersigned United States Magistrate Judge for Guilty Plea and Allocution of the Defendant, Mario Garcia-Duran, on the 2-Count [Indictment](#) filed herein charging violations of Title 21, United States Code, Sections 846 and 841(a)(1). After conducting the proceeding in the form and manner prescribed by Fed.R.Crim.P. 11, the Court finds:

- a. That the Defendant, after consultation with counsel of record, has knowingly and voluntarily consented to the administration of the Guilty Plea and Allocution in this cause by a United States Magistrate Judge subject to a final approval and imposition of sentence by the District Judge.
- b. That the Defendant pled guilty to Count 2 of the Indictment, pursuant to a plea agreement with the Government which has been filed and disclosed in open court pursuant to Fed.R.CrimP. 11(c)(2). Count 2 of the Indictment charges the Defendant with possession with intent to distribute 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, in violation of Title 21, United

States Code, Section 841(a)(1).

- c. That the Defendant is fully competent and capable of entering an informed plea, that the Defendant is aware of the nature of the charges and the consequences of the plea, and that the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offenses.

**IT IS THEREFORE** the recommendation of the undersigned United States Magistrate Judge that the District Judge accept the Plea Agreement and the Guilty Plea of the Defendant, with acceptance of the plea agreement conditional upon a review of the presentence report, and that the Defendant, **MARIO GARCIA-DURAN**, be finally adjudged guilty of that offense.

The United States District Clerk shall serve a copy of this proposed Findings of Fact and Recommendation on all parties by sending a notice of electronic filing and retain the receipt of notice of electronic filing. Within ten (10) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings, conclusions and recommendations contained in this report. A party's failure to file written objections to the findings, conclusions and recommendations contained in this report within ten days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district judge. *Douglass v. United States Auto Ass'n.*, 79 F.3d 1415, 1430 (5<sup>th</sup> Cir. 1996) (en banc).

So **ORDERED** and **SIGNED** this **8** day of **September, 2008**.

  
JUDITH K. GUTHRIE  
UNITED STATES MAGISTRATE JUDGE